

PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of September 4, 2012 ("Effective Date") and will end on April 30, 2013, by and between the State of Delaware, Department of Natural Resources and Environmental Control, Division of Parks and Recreation ("Delaware"), and SASAKI ASSOCIATES INC., a Massachusetts corporation, with offices at 64 Pleasant Street, Watertown, MA 02472 ("SASAKI ASSOCIATES INC.").

WHEREAS, Delaware desires to obtain certain services to develop a master plan and feasibility analysis for the redevelopment of the Historic Fort DuPont Complex; and

WHEREAS, SASAKI ASSOCIATES INC. desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and SASAKI ASSOCIATES INC. represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and SASAKI ASSOCIATES INC. agree as follows:

1. Services.

1.1 SASAKI ASSOCIATES INC. shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware's request for proposals, attached hereto as Appendix C; and (c) SASAKI ASSOCIATES INC.'s response to the request for proposals, attached hereto as Exhibit 1. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by SASAKI ASSOCIATES INC. shall be furnished without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify SASAKI ASSOCIATES INC., who shall then submit to Delaware a "Change Order" for approval authorizing said change.

The Change Order shall state whether the change shall cause an alteration in the price or the time required by SASAKI ASSOCIATES INC. for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 SASAKI ASSOCIATES INC. will not be required to make changes to its scope of work that result in SASAKI ASSOCIATES INC.'s costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from September 4, 2012 through April 30, 2013.

2.2 Delaware will pay SASAKI ASSOCIATES INC. for the performance of services described in Appendix B, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix A.

2.3 Delaware's obligation to pay SASAKI ASSOCIATES INC. for the performance of services described in Appendix B, Statement of Work will not exceed the fixed fee amount of \$ 375,000.00. It is expressly understood that the work defined in the appendices to this Agreement must be completed by SASAKI ASSOCIATES INC. and it shall be SASAKI ASSOCIATES INC.'s responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to SASAKI ASSOCIATES INC..

2.4 SASAKI ASSOCIATES INC. shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide SASAKI ASSOCIATES INC. a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle SASAKI ASSOCIATES INC. to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments should be sent to SASAKI ASSOCIATES INC., 64 Pleasant Street, Watertown, MA 02472.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the

performance of the services are to be paid by SASAKI ASSOCIATES INC.. If an Appendix specifically provides for expense reimbursement, SASAKI ASSOCIATES INC. shall be reimbursed only for reasonable expenses incurred by SASAKI ASSOCIATES INC. in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 Delaware shall subtract from any payment made to SASAKI ASSOCIATES INC. all damages, costs and expenses caused by SASAKI ASSOCIATES INC.'s negligence, resulting from or arising out of errors or omissions in SASAKI ASSOCIATES INC.'s work products, which have not been previously paid to SASAKI ASSOCIATES INC..

2.8 Invoices shall be submitted to:
Lee Ann Walling
Division of Energy & Climate
1203 College Park Drive, Suite 101
Dover DE 19904

3. Responsibilities of SASAKI ASSOCIATES INC..

3.1 SASAKI ASSOCIATES INC. shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by SASAKI ASSOCIATES INC., its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, SASAKI ASSOCIATES INC. shall follow practices consistent with generally accepted professional and technical standards. SASAKI ASSOCIATES INC. shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, SASAKI ASSOCIATES INC. shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. SASAKI ASSOCIATES INC. shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by SASAKI ASSOCIATES INC.'s failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the SASAKI ASSOCIATES INC. to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. SASAKI ASSOCIATES INC. will not produce a work product that violates or infringes on any copyright or patent rights. SASAKI ASSOCIATES INC. shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by Delaware of any products or services furnished by SASAKI ASSOCIATES INC. shall not in any way relieve SASAKI ASSOCIATES INC. of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of SASAKI ASSOCIATES INC.'s services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and SASAKI ASSOCIATES INC. shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by SASAKI ASSOCIATES INC.'s performance or failure to perform under this Agreement.

3.4 SASAKI ASSOCIATES INC. shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by SASAKI ASSOCIATES INC.'s associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Team Member	Title	% of Project Involvement
<u>Sasaki Associates</u>		
Fred Merrill, AICP LEED AP	Project Manager/Principal-in-Charge	25%
Justin Fay, AICP, LEED AP	Senior Planner/Project Director	40%
Alan Ward, FASLA	Urban Design/Landscape Design Principal	15%
Hernan Schlosman	Senior Urban Designer	20%
Alexandra Toteva	Project Planner/Designer	30%
Andrew McClurg, AICP	Transportation Planner	5%
Professional Staff	Planners, Urban Designers, Landscape Architects, Environmental Graphics	40%

HR&A Advisors

Candace Damon	Partner	10%
Caroline McCarthy	Director	30%
Professional Staff	Real Estate Analysts	30%

Heritage Strategies

Peter Benton, RA	Preservation Planner	20%
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TetraTech

Robert Maffia, AIA	Principal	5%
Casey Grabowski, PE	Civil Engineer	20%

Lord Cultural Resources

Joy Bailey	Senior Cultural Facilities Planner	TBD
Priya Sircar	Cultural Facilities Planner	TBD

MindMixer

Nick Bowden	Interactive Project Web Designer	5%
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3.5 Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, SASAKI ASSOCIATES INC. will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If SASAKI ASSOCIATES INC. fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of SASAKI ASSOCIATES INC. is unsuitable to Delaware for good cause, SASAKI ASSOCIATES INC. shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6 SASAKI ASSOCIATES INC. shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 SASAKI ASSOCIATES INC. agrees that its officers and employees will

cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 SASAKI ASSOCIATES INC. has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

3.9 SASAKI ASSOCIATES INC. will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.10 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 A project schedule is included in Appendix A.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by Delaware.

4.3 In the event that SASAKI ASSOCIATES INC. fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in Appendix A.

5. State Responsibilities.

5.1 In connection with SASAKI ASSOCIATES INC.'s provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2 Delaware agrees that its officers and employees will cooperate with SASAKI ASSOCIATES INC. in the performance of services under this Agreement and will be available for consultation with SASAKI ASSOCIATES INC. at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by SASAKI ASSOCIATES INC. under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and

shall so inform SASAKI ASSOCIATES INC. by written notice before the effective date of each such delegation.

5.4 The review comments of Delaware's designated representatives may be reported in writing as needed to SASAKI ASSOCIATES INC.. It is understood that Delaware's representatives' review comments do not relieve SASAKI ASSOCIATES INC. from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 Delaware shall, without charge, furnish to or make available for examination or use by SASAKI ASSOCIATES INC. as it may request, any data which Delaware has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

SASAKI ASSOCIATES INC. shall return any original data provided by Delaware.

5.6 Delaware shall assist SASAKI ASSOCIATES INC. in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 SASAKI ASSOCIATES INC. will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 Delaware agrees not to use SASAKI ASSOCIATES INC.'s name, either express or implied, in any of its advertising or sales materials. SASAKI ASSOCIATES INC. reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by SASAKI ASSOCIATES INC. for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. SASAKI ASSOCIATES INC. shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all

documentation supplied pursuant to this Agreement.

6.2 SASAKI ASSOCIATES INC. retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which SASAKI ASSOCIATES INC. retains title, whether individually by SASAKI ASSOCIATES INC. or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall SASAKI ASSOCIATES INC. be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, SASAKI ASSOCIATES INC. shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by SASAKI ASSOCIATES INC. prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of SASAKI ASSOCIATES INC. even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 SASAKI ASSOCIATES INC. warrants that its services will be performed in a good and workmanlike manner. SASAKI ASSOCIATES INC. agrees to re-perform any work not in compliance with this warranty brought to its attention within a

reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by SASAKI ASSOCIATES INC. for Delaware in connection with the provision of the Services, SASAKI ASSOCIATES INC. shall pass through or assign to Delaware the rights SASAKI ASSOCIATES INC. obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 SASAKI ASSOCIATES INC. shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the SASAKI ASSOCIATES INC., its agents or employees, or (B) SASAKI ASSOCIATES INC.'s breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) SASAKI ASSOCIATES INC. shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) SASAKI ASSOCIATES INC. shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If Delaware promptly notifies SASAKI ASSOCIATES INC. in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, SASAKI ASSOCIATES INC. will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. SASAKI ASSOCIATES INC. will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the Deliverable; (2) Delaware's failure to use corrections or enhancements made available by SASAKI ASSOCIATES INC.; (3) Delaware's use of the Deliverable in combination with any product or information not owned or developed by SASAKI ASSOCIATES INC.; (4) Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in SASAKI ASSOCIATES INC.'s opinion is likely to be, held to be infringing, SASAKI ASSOCIATES INC. shall at its expense and option either (a) procure the right for Delaware to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and SASAKI ASSOCIATES INC.'s entire liability with respect to infringement.

9.3 Delaware agrees that SASAKI ASSOCIATES INC.' total liability to Delaware for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or SASAKI ASSOCIATES INC. negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to SASAKI ASSOCIATES INC..

In no event shall SASAKI ASSOCIATES INC. be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, and even if SASAKI ASSOCIATES INC. has been advised of the likelihood of such damages.

10. Employees.

10.1 SASAKI ASSOCIATES INC. has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by SASAKI ASSOCIATES INC. in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

10.3 Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of SASAKI ASSOCIATES INC. who will be assigned to this project.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, SASAKI ASSOCIATES INC. shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. SASAKI ASSOCIATES INC. shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance

with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 SASAKI ASSOCIATES INC. acknowledges that SASAKI ASSOCIATES INC. and any subcontractors, agents or employees employed by SASAKI ASSOCIATES INC. shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3 SASAKI ASSOCIATES INC. shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, SASAKI ASSOCIATES INC. has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

12. Suspension.

12.1 Delaware may suspend performance by SASAKI ASSOCIATES INC. under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to SASAKI ASSOCIATES INC. at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay SASAKI ASSOCIATES INC. its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. SASAKI ASSOCIATES INC. shall not perform further work under this Agreement after the effective date of suspension. SASAKI ASSOCIATES INC. shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

12.2 In the event Delaware suspends performance by SASAKI ASSOCIATES INC. for any cause other than the error or omission of the SASAKI ASSOCIATES INC., for an aggregate period in excess of 30 days, SASAKI ASSOCIATES INC. shall be entitled to an equitable adjustment of the compensation payable to SASAKI ASSOCIATES INC. under this Agreement to reimburse SASAKI ASSOCIATES INC. for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

13. Termination.

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after SASAKI ASSOCIATES INC. is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

13.3 If termination for default is effected by Delaware, Delaware will pay SASAKI ASSOCIATES INC. that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to SASAKI ASSOCIATES INC. at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of SASAKI ASSOCIATES INC.'s default.
- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event SASAKI ASSOCIATES INC. shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of SASAKI ASSOCIATES INC. assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of SASAKI ASSOCIATES INC. to fulfill contractual obligations it is determined that SASAKI ASSOCIATES INC. has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

13.5 The rights and remedies of Delaware and SASAKI ASSOCIATES INC. provided in this section are in addition to any other rights and remedies provided by law or

under this Agreement.

13.6 Gratuities.

13.6.1 Delaware may, by written notice to SASAKI ASSOCIATES INC., terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by SASAKI ASSOCIATES INC. or any agent or representative of SASAKI ASSOCIATES INC. to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement is terminated as provided in 13.6.1 hereof, Delaware shall be entitled to pursue the same remedies against SASAKI ASSOCIATES INC. it could pursue in the event of a breach of this Agreement by SASAKI ASSOCIATES INC..

13.6.3 The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Subcontracts.

15.1 Any attempt by SASAKI ASSOCIATES INC. to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by SASAKI ASSOCIATES INC., without prior written approval of Delaware.

15.3 Approval by Delaware of SASAKI ASSOCIATES INC.'s request to subcontract

or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve SASAKI ASSOCIATES INC. of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 SASAKI ASSOCIATES INC. shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by SASAKI ASSOCIATES INC., its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by Delaware's approval of the SASAKI ASSOCIATES INC.'s request to subcontract.

16. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

17. Non-Appropriation of Funds.

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. State of Delaware Business License.

SASAKI ASSOCIATES INC. and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

19. Complete Agreement.

19.1 This agreement and its Appendices shall constitute the entire agreement between Delaware and SASAKI ASSOCIATES INC. with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior

oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19.3 SASAKI ASSOCIATES INC. may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

20. Miscellaneous Provisions.

20.1 In performance of this Agreement, SASAKI ASSOCIATES INC. shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. SASAKI ASSOCIATES INC. shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 SASAKI ASSOCIATES INC. covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. SASAKI ASSOCIATES INC. further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 SASAKI ASSOCIATES INC. acknowledges that Delaware has an obligation to

ensure that public funds are not used to subsidize private discrimination. SASAKI ASSOCIATES INC. recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare SASAKI ASSOCIATES INC. in breach of the Agreement, terminate the Agreement, and designate SASAKI ASSOCIATES INC. as non-responsible.

20.6 SASAKI ASSOCIATES INC. warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 SASAKI ASSOCIATES INC. shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit SASAKI ASSOCIATES INC.'s performance and records pertaining to this Agreement at the SASAKI ASSOCIATES INC. business office during normal business hours.

21. Insurance.

21.1 SASAKI ASSOCIATES INC. shall maintain the following insurance during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
- B. Comprehensive General Liability including products liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
- C. Professional Liability - \$1,000,000.00 per claim/\$3,000,000 annual aggregate
- D. If required to transport state employees, Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to

others.

- 21.2. SASAKI ASSOCIATES INC. shall provide forty-five (45) days written notice of cancellation or material change of any policies.
- 21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

See attached Certificate of Liability Insurance dated 07/24/2012

- 21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

22. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, SASAKI ASSOCIATES INC. hereby grants, conveys, sells, assigns, and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

23. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. SASAKI ASSOCIATES INC. consents to jurisdiction venue in the State of Delaware.

24. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO DELAWARE:
Lee Ann Walling
Division of Energy and Climate
1203 College Park Drive, Suite 101
Dover DE 19904

TO SASAKI ASSOCIATES INC.:
Justin Fay
Sasaki Associates
64 Pleasant Street
Watertown, MA 02472

SIGNATURE PAGE TO FOLLOW

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL**

Name: _____

Witness: _____

Title: Secretary

Date: 9/5/12

Date: 9/5/12

SASAKI ASSOCIATES INC.

Witness

Name: _____

Title: CFO

Date: August 24, 2012

Date: August 24, 2012

APPENDIX A

1. Project Schedule

Sasaki anticipates that the Fort DuPont Master Plan will be carried out according to the following schedule:

PHASE	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR
1 Immersion, Goal Formulation & Site Analysis								
2 Land Survey								
3 Existing Building Evaluation								
4 Real Estate Market Analysis								
5 Program Development & UD Concepts								
6 Master Plan & Implementation Strategy								
DNREC / Task Force Work Sessions								
Community Meetings								

Sasaki proposes the following schedule of DNREC work sessions and community meetings:

- Trip #1: September 2012
 - Work Session #1: Kick-off meeting and site tour with DNREC
- Trip #2: October 2012
 - Work Session #2 with DNREC: Analysis findings
 - Community Meeting #1: Introduction
- Trip #3: December 2012
 - Work Session #3 with DNREC: Concept plan alternatives
 - Community Meeting #2: Concept plan alternatives
- Trip #4: January/February 2013 (DNREC Trip to Sasaki Office)
 - Work Session #4 with DNREC: Preferred concept plan
 - This work session will take place in Sasaki's Watertown office.
- Trip #5: March 2013
 - Work Session #5 with DNREC: Presentation of final Master Plan
 - Community Meeting #3: Presentation of final Master Plan
- The Sasaki team will lead the community meetings and will generate the planning, urban design, and other technical material to form the basis of the meetings. DNREC will attend community meetings with an active role in introducing and concluding each meeting. DNREC will take lead responsibility for community meeting logistics, including securing meeting locations, identifying the list of invitees, outreach/invitations, and publicly advertising meetings.

2. Payment Schedule

Per Section 2.4 of the Professional Services Agreement for the Fort DuPont Master Plan, Sasaki shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. See Section 2 of the Professional Services Agreement for additional detail.